IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 35713 of 2007(B)

PETITIONER:

JOMON M.ARACKAL, AGED 38 YEARS,
S/O. BABY MANI, ARACKAL, THAZHUVAM KUNNU P.O.,
KALLOORKADU, MUVATTUPUZHA.

BY ADV. SRI.B.RENJITH MARAR
SMT.LEKSHMI RENJITH
SRI.L.REJESH NARAYANAN

RESPONDENTS:
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1. THE TAHSILDAR,
MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT.

2. DEPUTY TAHSILDAR (R.R.),
MUVATTUPUZHA, ERNAKULAM DISTRICT.

3. THE VILLAGE OFFICER,
KALLOORKAD VILLAGE, MUVATTUPUZHA TALUK,
ERNAKULAM DISTRICT.

BY GOVERNMENT PLEADER SRI.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON 07/12/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 35713 OF 2007 B
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Dated this the 7th day of December, 2007

J U D G M E N T

Petitioner is the registered owner of a tempo traveller bearing registration number KL-16 A 4013. It is stated that following the registration of Crime No.441/04 of Thodupuzha Police Station, the vehicle was seized by the police on 27/9/04. Thereafter the vehicle was produced before the Sub Divisional Magistrate, Idukki and though an application was made by the petitioner for custody of the vehicle, the same was rejected by the court by Ext.P4 order. Thereafter, an application was made by the financier of the vehicle and the vehicle was given to their custody. While so, by Exts.P5 and P6, revenue recovery action has been taken for realisation of Rs.50,400/- towards the Motor Vehicles Tax due for the period from 1/10/04 to 31/3/07. It is challenging the said demand, this writ petition has been filed by the petitioner.

2. Petitioner submits that in terms of SRO 878/75 issued under Section 22 of the Kerala Motor Vehicle Taxation Act, the petitioner's vehicle is entitled to be exempted from the levy of

Motor Vehicles Tax as the vehicle was in detention for an offence other than non payment of tax. Petitioner is also relying on the Full Bench judgment of this court reported in ***Regional Transport Officer v. Abdurahiman (2007(1) KLT 613)***.

3. I have considered the submission.

4. It is true that the vehicle in question was in police custody on its seizure by the police. It is also true that by virtue of Clause 27 of SRO 878/75 issued under Section 22 of the Motor Vehicles Taxation Act, such vehicles are ordered to be eligible for exemption from Motor Vehicles Tax. However, the question is whether detention by itself will entitle the petitioner to claim exemption from levy of tax.

5. The Kerala Motor Vehicle Taxation Act provides for exemption from levy of tax in Section (5) of the said Act. Act also provides the procedure to be followed for claiming the benefit of exemption. The Full Bench in the aforesaid judgment had considered this question and in para 12 thereof, it has been held that since the section providing for exemption prescribes a

procedure for claiming that benefit, exemption would be available only if that procedure is complied with. The procedure laid down requires a registered owner to file form G with the authorities for claiming exemption. In this case, the procedure as laid down has not been complied with and it is despite the same that the petitioner claims the benefit of exemption.

6. In my view, this aspect of the matter is covered against the petitioner by virtue of Full Bench judgment referred to above. As the petitioner has not filed G form, petitioner cannot claim the benefit of exemption.

However, the counsel for the writ petitioner contends that this finding of the Full Bench was rendered in the context of the question as to whether in respect of a vehicle under police custody for non payment of tax, a claim for exemption would lie. It is true that the question posed for consideration was as canvassed by the counsel for the writ petitioner. But the Full Bench has interpreted the Act as a whole and has laid down the general law that to claim the benefit of exemption, irrespective of

the context in which such claim is raised, a registered owner has to comply with the procedure laid down in Section 5. Such being the law laid down by the Full Bench, the claim for exemption raised by the petitioner in this writ petition is unsustainable and the writ petition is only to be dismissed and I do so.

ANTONY DOMINIC, JUDGE.

Rp